

**Nagappa Vs. Gangappa**

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**Court :** Karnataka Dharwad

**Decided On :** Mar-09-2012

**Judge :** D.V. Shylendra Kumar & B.V. Pinto

**Appeal No. :** Writ Appeal No.30494 of 2012 (GM-CPC)

**Appellant :** Nagappa

**Respondent :** Gangappa

**Judgement :**

**D.V. Shylendra Kumar, J**

1.The registry had raised an objection regarding the maintainability of this appeal u/s of the Karnataka High Court Act, pointing out that the order passed by the learned Single Judge in W.P.No. 66135/2011 on 13.02.2012 and which is made subject matter of the Writ Petition being one passed in exercise of supervisory jurisdiction of the High Court and therefore had sought the clarification from the Counsel as to the maintainability of the appeal.

2. In response to such objection, learned counsel for the petitioner-appellant had endorsed that it may be posted before the Court for orders regarding maintainability. Matter had come up for such purpose before the court on 28.02.2012 and this court directed the matter to be listed along with Writ Appeal No. 6371-/2011, on 05.03.2012.

3. This writ appeal was listed for disposal on 05.03.2012 along with other appeals. However, as there is no representation this appeal is being listed on 06.03.2012, 07.03.2012 and on 08.03.2012 and was adjourned for want of representation and is yet again yet again listed today for disposal.

4. As there is no representation for the appellant even today, we are forced to look into the merits of the appeal. The appeal is not yet admitted.

5. Having looked into the merits of the appeal we deem it proper to keep aside the question of maintainability and would rather dispose of the appeal on merits.

6. Writ appeal is directed against the order dated 13.02.2012 passed by the learned Single Judge of this Court in W.P. No. 66135/2011, dismissing the Writ Petition.

7. The Writ Petition itself was one questioning the legality of the order dated 30.08.2011 passed by the learned Civil Judge (Junior Division), Hunagund in Election Petition No. 1/2010 declaring the election of the petitioner to Hiremagi Grama Panchayath, as void and setting aside the result and on the other hand declaring Election Petitioner as the elected result and on the other hand declaring Election Petitioner as the elected candidate to the Grama Panchayath on the basis of draw of lots as it was found during the course of the trial of the Election Petition, and on ordering for recount of ballot papers, the election petitioner and the respondent, the declared candidate had both secured equal number of votes resulting in a tie.

8. It appears a Court Commissioner had been appointed for recounting the ballot papers and the Court Commissioner on such recount had found the declared candidate as having secured one vote more than the election petitioner. However, as this was objected to, the learned Judge of the Civil court had directed a fresh recount by the very court commissioner in the presence of parties and on such recount it was found that the election petitioner as well as the declared candidate, had both secured equal number of votes.

9. In view of such a tie, the learned Judge of the Civil Court with the consent of parties had decided to declare the candidate in whose favour the lot falls, to be the elected candidate and for such purpose the lots were drawn.

10. While there was no dispute or demur on these development and in fact parties had agreed to for drawing lots also, the only question on which the Writ Petition was presented was on the ground of the order declaring the election petitioner as the elected candidate being bad due to the procedure adopted for drawing of lots which is contended to be neither proper nor as per the Rules and therefore the order passed by the Election Tribunal is not sustainable, etc.

11. The learned Single Judge who had examined the Writ Petition found that the method adopted for drawing the lots was one of asking the parties to draw from a bowl containing 10 chits, out of which 8 were blank chits and one each in the name of the petitioner and the respondent in the Election petition. It is because the name of the election petitioner was picked up first ignoring the drawn blank chits, one vote was added to the Election Petitioner and he was declared elected after setting aside the election of that declared candidate.

12. It is this order, which was questioned before the learned Single Judge, Learned single Judge examined the procedure to be adopted by the Election Tribunal in case of equality of votes as provided for in sec. 21 of the Karnataka Panchayatraj, reading as under

21. Procedure in case of equality of votes If during the trial of an election petition it appears that there is an equality of votes between any candidates at the election and that the addition of a vote would entitle any of those candidates to be declared elected, then the Civil Judge (Junior Division) shall decide between them by lot and proceed as if the one on whom the lot falls had received an additional vote.

13. Learned single Judge found that the learned Judge of the Election Tribunal having made known the procedure to the parties whereby the lots would be drawn and they having consented, just because one of the parties lost in this method, he cannot turn round and question the procedure employed for drawing the lots as illegal or contrary to Rules and also finding that the procedure in noway violated

the statutory procedure, dismissed the Writ Petition.

14. It is aggrieved by this order of the learned Single Judge, the present Writ Appeal.

15. We have examined the grounds urged in support of the Writ Appeal, the order passed by the learned single judge as also the order passed by the Election Tribunal. While the Rules of the Karnataka Panchayathraj (Conduct of Election) Rules, 1993, provide for drawing of lots by the Returning Officer in a situation where it is found that two or more candidates have polled equal number of votes, an identical procedure is provided for in sec. 21 of the Act in a situation where the Election Tribunal also finds the same position.

16. Neither the provisions of Sec. 21 of the Act nor the provisions of Rule 73 of the Rules provide for any specific manner or procedure to be adopted for drawing of lots.

17. On a reading of these statutory provisions, at the best one can understand that a lot has to be drawn by having the name of the candidates who have secured equal number of votes and the candidate whose name is drawn is to be added one vote and therefore being declared elected. If at all the only variation in the procedure followed by the learned Judge of the Election Tribunal is not drawing from the two names but adding for a good measure 8 blank chits. In the absence of any specific procedure to be followed prescribed in the rules for drawing the lots and as adding a couple of blank chits can only eliminate the possibility of person drawing lots having an identity of the chit containing the name of the two candidates, the procedure cannot be found fault with as being an obnoxious one or leading to any mischief or defeating the purpose of drawing of lots.

18. At any rate, the procedure followed by the learned Judge of the Election Tribunal cannot be termed as either contrary to Sec. 21 of the Act or Rule 73 of the Rules.

19. Though the appellant has urged that in terms of the definition of the word lot as elicited in Oxford Dictionary 2008 Reprint and to variation therein, does not

conform to the procedure resorted to by the learned Civil Judge constituting the Election Tribunal and this is urged as a ground to set aside the order, we do not find that the procedure as followed by the learned Judge of the Election Tribunal to be either in contravention or at variance with the definition even as given in the Oxford Dictionary to the word lot

20. In any view of the matter, we do not find any reason or scope for interference with the orders passed by the learned Single Judge or even the Election Tribunal and therefore this Writ Appeal is dismissed.

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